Pendaftar dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v KS South Motor Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J–01–40 OF 1999
SHAIK DAUD, SITI NORMA YAAKOB AND HAIDAR JJCA
15 FEBRUARY 2000

Public Authorities *— Tort — Negligence — Information supplied to public subject to payment of fee — Reliance on information — Whether duty to take care that information supplied is accurate — Lack of due diligence in management and running of registries of motor vehicles — Whether duty of care owed to public at large*

The issue in this appeal was whether the law imposes a duty on a public authority, namely the Registrar and Inspector of Motor Vehicles ('the appellants'), to take care that all information supplied by them to a class of persons who relies on such information, is accurate and authentic. The appellants submitted that it is unfair, unjust and unreasonable to impose such a burdensome duty on them as it would practically immobilise their statutory function of registering and maintaining a register of all vehicles on the road.

Held, dismissing the appeal:

(1) The duty that was sought to be imposed on the appellants was the duty to take care that all information given by them to a paying class of persons who seek that information, is accurate to enable that class of persons to conduct private and commercial transactions in relation to the particular vehicle on which the information is sought. In other words, the duty to take care is owed to an aggrieved party and not to the public at large (see p 546E–F).

(2) The registries of the appellants had been penetrated into by person unknown and particular files had been removed and replaced or substituted with fabricated ones. This unauthorized intrusion could only happen with the assistance of officers in the employment of the appellants. The appellants had absolute control of the day-to-day management of their respective registries and the fact that files had gone missing was proof enough that there had been lack of supervision on the part of the appellants and that omission pointed to there being lack of due diligence in the management and running of the registries (see p 547B–D).

(3) No reason was given on how the forged documents found their way into the registries of the appellants and the court could only conclude that there had been gross mismanagement and negligence. The appellants must be made accountable for this dereliction of duty (see p 548D–E).

(4) The law should be that that the registers maintained by the appellants must contain accurate particulars of all vehicles

registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and clearly a duty to take care must exist in such a case (see p 548E–F).

(5) Every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be purchasers of such vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the appellants to take care that all information coming from them are accurate (see p 548F–H).]

[Bahasa Malaysia summary

Isu dalam rayuan ini adalah sama ada undang-undang mengenakan kewajipan ke atas pihak berkuasa awam, iaitu Pendaftar dan Inspektor Kenderaan Bermotor ('perayu-perayu'), untuk berjaga-jaga supaya segala maklumat yang diberikan oleh mereka kepada suatu kelas orang yang bergantung pada maklumat tersebut adalah tepat dan benar. Perayu-perayu berhujah bahawa adalah tidak adil, tidak patut dan tidak munasabah untuk mengenakan kewajipan yang begitu membebankan ke atas mereka kerana ini akan melemahkan pelaksanaan fungs-fungsi mereka di bawah undang-undang dalam mendaftarkan dan mengekalkan suatu daftar semua kenderaan yang masih beroperasi.

Diputuskan, menolak rayuan tersebut:

(1) Kewajipan yang hendak dikenakan atas perayu-perayu adalah kewajipan untuk berjaga-jaga supaya semua maklumat yang diberikan oleh mereka kepada kelas orang yang membayar untuk mendapatkan maklumat tersebut adalah tepat bagi membolehkan mereka mengendalikan transaksi persendirian dan komersil berkaitan dengan kenderaan tertentu yang mana maklumat adalah dikehendaki. Dalam perkataan lain, kewajipan untuk berjaga-jaga adalah terhutang kepada pihak yang terkilan dan bukannya kepada masyarakat awam (lihat ms 546E–F).

(2) Daftar perayu-perayu telah ditembusi oleh orang yang tidak diketahui dan fail-fail tertentu telah dikeluarkan dan diletakkan kembali atau digantikan dengan fail-fail yang direka-reka. Pencerobohan yang tidak berwibawa ini hanya boleh berlaku dengan pertolongan daripada pegawai yang digaji oleh perayu-perayu. Perayu-perayu mempunyai kawalan mutlak ke atas pengurusan harian daftar masing-masing dan hakikat bahawa fail-fail telah hilang adalah bukti yang mencukupi bahawa penyeliaan adalah kurang memuaskan oleh pihak perayu-perayu dan

peninggalan tersebut menunjukkan kekurangan ketelitian sewajarnya dalam pengurusan dan pengendalian daftar tersebut (lihat ms 547B–D). A

(3) Tiada alasan diberikan tentang bagaimana dokumen yang dipalsukan dijumpai pada daftar perayu-perayu dan mahkamah hanya boleh membuat kesimpulan bahawa telah berlakunya salah urusan dan kecuaian yang ketara. Perayu-perayu mestilah bertanggungjawab atas pengabaian dalam kewajipan ini (lihat ms 548D–E). B

(4) Haruslah menjadi undang-undang bahawa daftar yang dikekalkan oleh semua perayu mestilah mengandungi butir-butir yang tepat tentang semua kenderaan yang didaftarkan oleh mereka. Ini adalah perlu untuk perjalanan sistem daftar yang baik kerana pemilik kenderaan motor atau sesiapa yang lain yang terlibat dalam perniagaan motor akan melakukan carian atas daftar dengan membuat bayaran dan dengan jelas suatu kewajipan untuk berjaga-jaga mestilah wujud dalam kes sedemikian (lihat ms 548E–F). C D

(5) Setiap maklumat tertentu yang tercatat dalam fail kenderaan berdaftar merupakan representasi bahawa maklumat itu adalah tepat dan boleh dipercayai kerana masyarakat yang membayar, khususnya pemilik kenderaan motor, adalah pembeli kenderaan tersebut dan mereka yang terlibat dalam perniagaan motor bergantung kepada maklumat demikian untuk menjalankan transaksi persendirian dan komersil. Konsep kepercayaan inilah yang mengenakan suatu kewajipan ke atas perayu-perayu untuk berjaga-jaga supaya segala maklumat yang berpunca daripada mereka adalah tepat (lihat ms 548F–H).] E F

Notes

For cases on negligence involving public authoritites, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1446–1449. G

Cases referred to

Council of the Shire of Sutherland; The v Heyman & Anor (1984–1985) CLR 424 (refd)

Invercargill City Council v Hamlin [1996] 2 WLR 367 (refd) H

Ministry of Housing and Local Government v Sharp & Anor [1970] 2 QB 223 (refd)

Mohamed Mydin v Ramiah [1965] 1 MLJ 33 (refd)

Ng Ngat Siang v Arab-Malaysian Finance Bhd & Anor [1988] 3 MLJ 319 (refd) I

Parramatta City Council v Lutz (1988) 12 NSWLR 293 (refd)

Sajan Singh v Sardara Ali [1960] MLJ 219 (refd)

Legislation referred to

English Land Charges Act 1925 [Eng]
Road Traffic Ordinance 1958

Appeal from: Civil Suit No 25–39 of 1986 (Sessions Court, Muar)

Abu Bakar Jais (Senior Federal Counsel) (Attorney General's Chambers) for the appellants.

Cyrus Das (*E Ramasamy* with him) (*E Ramasamy & Co*) for the respondent.

Siti Norma Yaakob JCA (delivering judgment of the court): This appeal raises a very interesting and important point of law. It is this. Does the law impose a duty on a public authority to take care that all information supplied by him to a class of persons who relies on such information, is accurate and authentic. In this instant appeal, the public authority is the Registrar and Inspector of Motor Vehicles ('RIMV') at Malacca and Muar, the first and second appellants before us. Together with the third appellant, they argue that it is unfair, unjust and unreasonable to impose such a burdensome duty on them as it would practically immobilise their statutory function of registering and maintaining a register of all vehicles on the road. Furthermore owners of motor vehicles registered with them are supplied with registration books containing material particulars of the vehicles they own and more importantly such registration books carry a warning that the owners of such vehicles need not necessarily be the legal owners. Much reliance was placed by the appellants on this warning to absolve them from liability.

The respondent on the other hand maintain that the first and second appellants are not only statutorily bound to maintain a register of all vehicles registered by them but that such duty extends to maintaining a register that contains accurate details of the vehicles which can be relied upon by members of the public. Otherwise there would be grave uncertainty and chaos amongst the public who carry out private and commercial transactions in reliance of the information gleaned from the register.

To appreciate the point of law involved, we begin by setting out the factual background, which is in no way disputed.

The respondent, who is based in Muar, Johor, are in the business of buying and selling motor vehicles both new and used ones. On 8 July 1980, the respondent was approached by two brokers who were anxious to sell a second hand Mercedes-Benz 240D ('the car') to the respondent. The car was registered in the name of one Tay Boon Kok ('Tay') and it bore a registration number, MF9857. The respondent took up the offer of purchasing the car from Tay after satisfying themselves that all the particulars given in the registration book issued by the first appellant appear to be in order. The respondent were also informed that the RIMV file pertaining to the car had already been transferred to the second appellant. The purchase price of the car was agreed at RM25,000 and after Tay had signed the necessary transfer forms, the respondent took possession of the car, paid Tay RM4000 by way of a deposit with the promise to pay the

balance of RM21,000 once the car was registered by the second appellant in the respondent's name. A

That same day, the respondent's clerk took all the documents signed by Tay including the registration book to the second appellant with a view to having the car transferred and registered into the respondent's name. The particulars in the documents produced by the respondent were verified with the relevant file traced and produced by the second appellant and after making a payment of RM20, the second appellant endorsed the registration book with the respondent's name as the new owner of the car. B

As the car was purchased for the sole purpose of reselling it at a profit, the respondent found a ready buyer, two weeks later in the person of one Su Yong Hing ('Su') who purchased it at RM29,500 on 23 July 1980. The car was duly registered in Su's name with the ownership claimed by Public Finance Bhd; as the latter had financed the purchase. C

Seven months later, sometime in February 1981, the police informed the respondent that the car was a stolen car as it was reported missing in Petaling Jaya on 26 June 1980. As the police demanded its surrender, the respondent, with the assistance of Su did so. Police investigations revealed the following facts. D

(1) The registration number of the car, MF9857, is false as the car was originally alloted a registration number, NM6617 by the RIMV, Negeri Sembilan. E

(2) MF9857 was the registration number of a motor Vespa, alloted by the first appellant to one Teoh Yan Teng of 89, Jalan Tun Tan Cheng Lok, Melaka, on 19 October 1976. The file pertaining to the motor Vespa together with all relevant documents are no longer traceable. They have vanished into thin air. F

(3) A file on MF9857 as the alloted registration number of the car was created in the office of the first appellant to replace the original file of the motor Vespa that had gone missing.

(4) Likewise particulars of the two registered owners in the registration book of the car contain false information as to their ownership as there are no such persons known as Roseley bin Mohd Yaacob, the first owner endorsed in the registration book and Tay, the second owner from whom the respondent purchased the car. Likewise, their addresses too, were fictitious. G

In July 1982, the respondent commenced proceedings against the three appellants in the Sessions Court, Muar on the ground that they had suffered a commercial loss when they refunded the whole of the purchase price of RM29,500 to Su as they were not able to give a good title of the car to him. In seeking to indemnify their loss, the respondent founded their claim on four principal and alternative causes of action namely the torts of fraud, collusion, negligence or negligent statement and misrepresentation on the first and second appellants. The third appellant is added a party by virtue of s 5 of the Government Proceedings Ordinance 1956, and the reliefs sought by the respondent are: H I

A (1) special damages of RM29,500;

(2) interest on the special damages from 4 March 1981 till date of realization;

(3) general damages; and

(4) costs.

B After making a number of findings of fact, the sessions court held that the first and second appellants had been negligent in registering the car in 1980 based on documents that have been forged, resulting in loss being suffered by the respondent. Likewise the sessions court found that there had been negligent misrepresentation on the part of the appellants but concluded C there was insufficient evidence to prove fraud, collusion or negligent statement. The respondent's claim was allowed and judgment entered against the appellants for the special damages, interest and costs but not the claim for general damages. The appellants appealed and the High Court confirmed the findings of the sessions court and affirmed the judgment but unfortunately we do not have the benefit of the judge's reasoning for D dismissing the appeal as he has since left the Judiciary. So we have only the written judgment of the sessions court to go by.

Before we deal with the specific arguments of both parties, it is pertinent that we identify and bear in mind the relevant statutory provisions on the duty of care imposed on the appellants. The statute in question is the Road Traffic Ordinance 1958 ('the Ordinance') and for the purpose of this E appeal the following provisions are relevant.

6 Registration of motor vehicles and owners

(1) No person shall possess or use a motor vehicle unless that vehicle is registered and the person for the time being entitled to the possession of the motor vehicle is registered as the owner thereof in accordance with the F provisions of this Part of this Ordinance.

7 Keeping of Register

Every Registrar shall keep and maintain a register of all vehicles registered under this Ordinance on the registration area of which he is Registrar. Such register shall be in such form and contain such information, details and G particulars as the Director General may direct.

10 Registration Numbers

(1) Upon the registration of a motor vehicle the Registrar shall —

(a) assign to the motor vehicle the prescribed index mark indicating the registration area in which the vehicle is registered and a separate H number (in this Ordinance such mark and number are referred to collectively as 'the registration number'), and such registration number shall continue to be the registration number of such motor vehicle until it is broken up, destroyed or sent permanently out of Malaysia, and such registration number shall not be assigned to any other motor vehicle:

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(b) register the person by whom the application for registration was made as the owner of the motor vehicle; and

(c) issue to that person a registration book in the prescribed form. ...

(4) The decision of the Registrar under para (b) of sub-s- (2)of this section shall be final and conclusive for the purpose of this Ordinance, but shall not be deemed to prejudice or to affect in any way the right of any other claimant to the ownership of the motor vehicle to cause his rights to be determined by a court, and the Registrar shall amend the register in accordance with any final order made by such court.

Before us, En Abu Bakar Rais, senior federal counsel for the appellants conceded that whilst s 7 of the Ordinance imposes a duty on the part of the first and second appellants to keep a register of all vehicles registered by them, that duty does not extend to their taking care that all particulars of such registered vehicles maintained by them are accurate and true. He contended that to do so, is to impose a very heavy and burdensome duty on the first and second appellants as it is practically impossible to ascertain the correctness or accuracy of every information of each vehicle submitted for registration. As such, he concluded that it is unfair and unreasonable to expect the first and second appellants to vouchsafe the correctness and accuracy of any particular matter in the register maintained by them. This is particularly so as on the facts of this appeal they were not the authors of the inaccurate particulars appearing in the file records. Expressed in another way although there is a duty to keep a register there is no duty to maintain a true and proper one.

This argument, we consider is tenable if the duty of care is owed to the public at large. This is not the criteria here. The duty that is sought to be imposed on the first and second appellants is the duty to take care that all information given by them to a paying class of persons who seek that information, is accurate to enable that class of persons to conduct private and commercial transactions in relation to the particular vehicle on which the information is sought. In other words the duty to take care is owned to an aggrieved party and not to the public at large.

It must be remembered that on the evidence before the sessions court, the respondents's clerk had gone to the registry of the second appellant armed with all the necessary documents for the sole purpose of finalising the sale of the car by having the car transferred into the name of the respondent as its new owner. The clerk had waited for one hour for the file on the car to be traced and after the necessary verification was made of all particulars in the documents produced by the clerk against those in the file, and on payment of the registration fee, the registration book was endorsed with the respondent's name. It is therefore not correct for the appellants to maintain that the second appellant was not aware of the purpose of the clerk's visit to the registry as the act of endorsing the registration book is proof enough that a transfer transaction was afoot and if indeed the original file of the vehicle bearing registration number, MF9857, had been produced, the second apellant would not have made the transfer.

It must also be remembered that on the findings of the sessions court, the contents of the file that was compared for verification was not the original file of the car. It was a substituted and fabricated file. It replaced the file of a motor Vespa which was alloted the registration number, MF9857,

A the very same registration number of the car. The file of the motor Vespa has since gone missing. Likewise there is nothing known of the original file of the car that was registered as NM6617 by the RIMV, Negeri Sembilan.

Those were the files which the first and second appellants say were kept under lock and key and no unauthorized person had access to them. Yet
B they have conveniently gone missing or untraceable. The impression that is created in our minds is that the registries of the first and second appellants have been penetrated into by person or persons unknown and particular files have been removed and replaced or substituted with fabricated ones. This unauthorized intrusion can only happen with the assistance of officers in the employment of the first and second appellants. On the facts of this
C case this is the inescapable conclusion that we have reached as by no other means can any file maintained in the manner as made out by the first and second appellants, be reported missing or substituted.

Both the first and second appellants had the absolute control of the day-to-day management of their respective registeries and the fact that files had
D gone missing is proof enough that there had been lack of supervision on the part of the first and second appellants and that omission we say points to there being lack of due diligence in the management and running of the two registries.

A somewhat similar fact situation arose in the case of the *Ministry of Housing and Local Government v Sharp & Anor* [1970] 2 QB 223, where a
E careless clerk in a local land registry issued, on request, an offical certificate to would-be purchasers of a piece of land that the land was free from any charge when in fact the Ministry of Housing and Local Government had already registered a charge two years earlier. The purchasers completed the sale based on the certificate. As the Ministry could not claim the benefit of
F the charge from the purchasers, they sued the registrar of the land registry and the local council on the ground that they were responsible for the mistake of the clerk.

When dealing with the registrar's obligations under the English Land Charges Act 1925, the Court of Appeal at p 265 of the report stated as follows:

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> The fundamental obligation of the registrar is to keep the register, and in return he receives the prescribed fees. He must enter in the register every charge which is duly submitted to him. He must allow any person to search the register: and, if asked, he must make an official search and issue an official certificate setting forth the result.

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> The object of the register is to provide security for two classes of people, incumbrancers and purchasers.
>
> By requiring a search, a purchaser is entitled to know exactly that charges incumber the land, and to adjust his price accordingly. If the registrar issues an official certificate, showing the land to be clear of any charge, that is conclusive in favour of the purchaser.

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In finding the registrar liable, the court at p 266 of the report then adopted the following reasoning:

> He must answer for the mistakes of the clerk and make compensation for the loss. He is a public officer and comes within the settled principle of English law that when an official duty is laid on a public officer, by statute or by common law, then he is personally responsible for seeing that the duty is carried out. He may and often does, get a clerk or minor official, to do the duty for him, but, if so, he is answerable for the transgression of the subordinate ... . Sometimes it is an absolute duty, in which case he must see that it is performed absolutely. At other times it is only a duty to use due diligence, in which case he must see that due diligence is used. But, in any event, if the duty is broken, and injury done thereby to one of the public, then the public officer is answerable. The injured person can sue him in the civil courts for compensation. ... By law he is responsible. He will, of course, if he is wise, insure himself against his liability: or get the Government to stand by him. But liable he is — to the person injured.

Likewise on the facts of the instant appeal, although we acknowledge that the forged documents were done by person or persons unknown, the fact that not only such forged documents found their way into the registries of the first and second appellants, but that they replaced legitimate files originally maintained by them, indicate that there had been gross mismanagement and negligence. We are also informed that this is not an isolated case but that there had been wide transgression and that this appeal is the forerunner of more cases to come before the courts. No reason was given how this could have happened and we can only conclude that the day-to-day operations at the registries of the first and second appellants have not been conducted properly or professionally. For this dereliction of duty, we say that the first and second appellants must be made accountable. It is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and 'clearly a duty to take care must exist in such a case. See the case of *Ministry of Housing and Local Government v Sharp & Anor*.

We also consider that every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate. See the Privy Council case of *Invercargill City Council v Hamlin* [1996] 2 WLR 367, and the Australian case of *Parramatta City Council v Lutz* (1988) 12 NSWLR 293. As was said by the High Court of Australia in the case of *The Council of the Shire of Sutherland v Heyman & Anor* (1984–1985) CLR 424, reliance 'has always been a important element in establishing the existence of a duty of care. It has been suggested that liability in negligence is largely, if not exclusively, based on the plaintiff's reliance on the defendant's taking care in circumstances where the defendant is aware or ought to be aware of that reliance.'

A The appellants seek to disclaim any knowledge that the respondent relied on the information given on the ownership of the car to escape liability. This we say is a non-issue as the name and identity of the respondent is a real give-away. The second appellant must have been aware or ought to have been aware that the act of transferring the car into the respondent's name may not be the last transaction conducted by the B respondent on the car. The possibility of it being transferred by the respondent to a third party by way of a resale is there and being a car trader that possibility is real.

Finally, we come to the appellants' submission that no liability can be attached to them by virtue of the warning expressed in Bahasa Malaysia in C the registration book which reads as follows:

> Pemllik berdaftar ialah orang yang menyimpan kereta itu. Ia boleh jadi atau tidak pemilik sah bagi kereta itu.

We had asked En Abu Bakar Jais as to the origin of the warning in the registration book. He was only able to say that it may well have developed D from s 10 (4) of the Ordinance. If that be so, we consider the warning has no relevance to the issue at hand as the provisions of the sub-section refer to the right of any claimant, other that the registered owner to claim title to the car and that the claimant's right can be determined by a court of law. Clearly the sub-section refers to the manner by which disputed claims of E title to a registered car can be resolved. Here we are not concerned with the disputed title of the car but the extent to which liability can be attached to the first and second appellants for supplying inaccurate information on the car to the detriment of the respondent who had acted on such inaccurate information. Cases like *Sajan Singh v Sardara Ali* [1960] MLJ 219, *Mohamed Mydin v Ramiah* [1965] 1 MLJ 33 and *Ng Ngat Siang v Arab-*F *Malaysian Finance Bhd & Anor* [1988] 3 MLJ 319, relied upon by the appellants testify to this but they do not resolve the real issue at hand as they concern a different subject matter altogether.

On the totality of the evidence before the sessions court, we are satisfied that the incidence of negligence or negligent statement and G misrepresentation as particularized in paras 18 and 19 of the amended statement of claim have been proved and we accordingly affirm the findings of the Sessions and High Courts, and dismiss this appeal with costs.

Appeal dismissed.

H Reported by Jafisah Jaafar

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